

## **REMARKS**

### **Status of case**

Claims 15-18, 22-30, 32-43 and 66-68 are currently pending in this case.

### **Rejection under 35 U.S.C. § 102**

Claims 15-18, 22-26, 28-30, 32-33, 35-43, 66, and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Ray et al. (U.S. 6,018,722).

Applicant amends claim 15 to clarify that the receiver receives data related to the value of “pooled investment” funds, as well as to show that the buying and selling of investment instruments entrusted to individual asset managers to achieve the newly allocated value of funds. Support for these features may be found in the specification as filed at least at page 4, lines 24-32; page 10, lines 1-8; page 11, lines 26-33; page 18, lines 9-17; page 20, lines 3-15; and pending claim 38. Independent claims 22 and 40 are amended in an analogous manner.

In its arguments filed May 11, 2009, Applicant argued with respect to the § 102 rejection that “the present invention as claimed is directed to a funds investment system and method wherein the funds are pooled,” and that the prior art is “entirely focused on providing investment management for individual investors.” The Office Action dated Sep. 18, 2009 disagrees, noting that the support upon which the Applicant relied was found only within the preamble. Further, the Office Action asserts that the Applicant is arguing terminology not found in the claims. Applicant accordingly amends independent claims 15, 22, 26, 30 and 40 to clarify that the receiver receives data related to the value of “pooled investment” funds.

The Office Action also asserted, however, that Ray does teach an investment system related to pooled funds. In particular, the Office Action points to column 2, lines 10-14 of Ray, which state that “this powerful tool enables untrained individuals to manage their portfolio.” The Office Action defines “portfolio” according to Barron’s Dictionary of Business Terms, Third Edition (copyright 2000), as being a “group of securities held by an individual or institutional investor which may contain a variety of common and preferred stocks, corporate and municipal bonds, certificates of deposit and treasury bills, that is, appropriate selections from the equity, capital and money markets”.

Applicant respectfully disagrees. The pooling of funds applies to institutional investors that pool funds together from a number of individual investors and make investment decisions with respect to those “pooled” funds. One of ordinary skill in the relevant art would not recognize an individual’s investment portfolio as constituting the pooled funds, as claimed. Applicant respectfully traverses the reliance on the dictionary definition of portfolio as the basis for rejecting claims 15, 22, 26, 30, and 40 as amended.

Applicant also respectfully submits that Ray does not teach or suggest rebalancing of an investment portfolio according to claim 15; namely, a rebalancing that is driven by the value of the pooled funds. In addressing this claim feature, the Office Action refers to a ‘technical analysis’ in Ray. In particular, the Office Action relies on column 6, lines 55-56, of Ray: “each day every asset of every portfolio is evaluated using technical analysis. Those securities which are classified by technical analysis as being in a sell zone and which are not recommended by the fundamental analysis, generate a specific sell transaction”.

Applicant respectfully disagrees. First, Ray does not teach or suggest any type of rebalancing of an investment portfolio of *pooled* funds, let alone the type of rebalancing recited in claim 15. In addition, reliance on the ‘technical analysis’ in Ray indicates that the method that Ray discloses and teaches with respect to the buying and selling of individual investment instruments requires a high level of skill and understanding with respect to this specific technique for the purpose of making buy and sell recommendations. At the very least, Ray would require understanding of the principles and techniques of “technical analysis”.

In contrast, the independent claims of the instant application do not require any such level of skill or understanding as the rebalancing of investments is decided solely by the value of the funds with individual buy and sell decisions being entrusted to a skilled individual such as an asset manager who is external to the funds investment system and method. In response to this argument, the Office Action asserts that such features are not recited in the claims. By virtue of the present amendment, such features are recited in the claims, and are not taught or suggested by the cited prior art.

For the foregoing reasons, Applicant respectfully submits that Ray does not teach all the features of independent claims 15, 22, 26, 30, and 40, as amended, and request withdrawal of the 102(b) rejection of claims 15-18, 22-26, 28-30, 32-33, 35-43, 66, and 68.

**Rejection under 35 U.S.C. § 103**

Claims 27, 34 and 67 are rejected under 35 U.S. C. 103(a) as being unpatentable over Ray as applied to claim 26.

For the reasons discussed above, Ray does not teach or suggest all the features of independent claims 26 or 30, as amended. In other words, Applicant respectfully submits that each of claims 27, 34, and 67 depend from patentable claims and are thus patentable themselves. Applicant respectfully requests withdrawal of the 103(a) rejection and allowance of the claims.

**SUMMARY**

Applicants respectfully request the Examiner grant allowance of this application. The Examiner is invited to contact the undersigned attorney for the Applicants via telephone if such communication would expedite this application.

Respectfully submitted,

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